

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Coral Wireless d/b/a Mobi PCS Request for	)	
Review of the Decision of the Universal Service	)	
Administrator	)	
	)	
Request for Review by Cordova Wireless	)	
Communications, LLC of a Decision of the	)	
Universal Service Administrator	)	
	)	
Federal-State Joint Board on Universal Service	)	CC Docket No. 96-45
	)	
Federal-State Joint Board on Universal Service	)	WC Docket No. 05-337
High-Cost Universal Service Support	)	

**ORDER**

**Adopted: August 7, 2014**

**Released: August 7, 2014**

By the Acting Chief, Wireline Competition Bureau:

**I. INTRODUCTION**

1. In this Order, we address two requests seeking review of decisions by the Universal Service Administrative Company (USAC). Coral Wireless d/b/a Mobi PCS (Coral Wireless) and Cordova Wireless Communications (Cordova) each challenge separate decisions by USAC to recover high-cost support received under the rules governing support provided to competitive eligible telecommunications carriers (ETCs).<sup>1</sup> For Coral Wireless, we conclude that it was appropriate for USAC to recover support for certain lines. In doing so, we also deny a request by Coral Wireless for waiver of section 54.307(b) or section 54.307(e) of the Commission's rules to permit Coral Wireless to receive support for the lines in question. For Cordova, we remand the matter to USAC to determine the number of lines ineligible for support because they are not working loops and to recover support for those lines.

**II. BACKGROUND**

2. Both Coral Wireless and Cordova seek review of USAC decisions pertaining to competitive ETC support.<sup>2</sup> Both matters involve section 54.307(b) of the Commission's rules, which required competitive ETCs to report the number of working loops (also referred to as lines) in order to receive universal service support. Prior to the *USF/ICC Transformation Order*, competitive ETCs received universal service funding based on the identical support rule.<sup>3</sup> Following the reforms contained

<sup>1</sup> Coral Wireless, Request for Review and Petition for Waiver, WC Docket No. 96-45 et al. (filed Dec. 10, 2012) (Coral Wireless Petition); Cordova Wireless Communications, Request for Review, WC Docket No. 96-45 et al., (filed July 5, 2013) (Cordova Petition).

<sup>2</sup> Pursuant to section 54.723, we conduct de novo of review of such requests. 47 C.F.R. § 54.723.

<sup>3</sup> See *Connect America Fund et al.*, WC Docket No. 10-90 et al., Report and Order et al., 26 FCC 17663, 17825, para. 498 (2011) (*USF/ICC Transformation Order*), *aff'd In re: FCC 11-161*, 753 F.3d 1015 (10th Cir. 2014).

in the *USF/ICC Transformation Order*, the identical support rule and the accompanying requirements of section 54.307(b) were eliminated starting in January 2012. Most competitive ETCs stopped reporting line counts at that time.<sup>4</sup> However, competitive ETCs that serve remote areas of Alaska continue to report line count information for purposes of receiving support.<sup>5</sup>

### III. DISCUSSION

#### A. Coral Wireless

3. Based on our review, we conclude that the lines reported by Coral Wireless were not eligible for support under section 54.307(b) of the Commission's rules. USAC therefore is directed to recover support for these lines.

4. Coral Wireless is a competitive ETC that sells prepaid wireless services in Hawaii.<sup>6</sup> As part of its internal policies, Coral Wireless routes non-emergency outbound calls to Coral Wireless's customer service center beginning 30 days after a customer has made his last prepayment.<sup>7</sup> Ninety days after the last prepayment, Coral Wireless closes the account.<sup>8</sup> When reporting line counts for universal service purposes under section 54.307, Coral Wireless included all open accounts, including those that were between 30 and 90 days since the last prepayment (hereinafter, disputed lines).<sup>9</sup>

5. In the course of an audit, USAC determined that these disputed lines should not have been reported for the purposes of high-cost support under section 54.307 of the Commission's rules, and therefore sought to recover the support associated with those lines from Coral Wireless.<sup>10</sup> In reaching this conclusion, USAC relied upon the definition of working loop contained in Part 36 of the Commission's rules, which requires a loop to be revenue generating.<sup>11</sup> As the disputed lines were not generating revenue, USAC concluded that they were not eligible for support under section 54.307.<sup>12</sup>

6. Under the governing requirements, we conclude the disputed lines were not working loops. Section 54.307(b) of the Commission's rules defines working loops "for universal services support purposes" as "loops as used jointly for exchange and message *telecommunications services*."<sup>13</sup> Under Commission regulations, telecommunications service is defined as "the offering of *telecommunications* for a fee directly to the public."<sup>14</sup> Telecommunications, in turn, is defined as "the transmission, *between*

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<sup>4</sup> See *id.* at 17663, 17825-30, paras. 498-511, 47 C.F.R. § 54.307(e)(3).

<sup>5</sup> Recently, the Commission proposed to freeze competitive ETC support for carriers serving the remote areas of Alaska as of December 31, 2014. The Commission also proposed to remove the requirement for such competitive ETCs to report line count information. *Connect America Fund et al.*, WC Docket No. 10-90 et al., Report and Order et al., FCC 14-54, at para. 256 (rel. Jun. 10, 2014). The Commission proposed to eliminate section 54.307(b) and to renumber and revise section 54.307(e) of the current rules.

<sup>6</sup> Coral Wireless Petition at 2.

<sup>7</sup> See *id.*

<sup>8</sup> *Id.*

<sup>9</sup> See *id.* at 3.

<sup>10</sup> See *id.* at 4-5.

<sup>11</sup> See *id.* at 8. 47 C.F.R. Pt. 36, App.

<sup>12</sup> See Coral Wireless Petition at 8.

<sup>13</sup> 47 C.F.R. § 54.307(b) (emphasis added).

<sup>14</sup> 47 C.F.R. § 54.5 (emphasis added).

or among points specified by the user, of information of the user's choosing, without change in the form or content of the information sent and received."<sup>15</sup> For the disputed lines, the transmission is not occurring between or among points specified by the user: rather, the user indicates the point to which he wishes to make the call, but Coral Wireless reroutes the call to its service center. This is not telecommunications as defined by Commission regulations. We therefore conclude the disputed lines were not being used for telecommunications services and were therefore not within the definition of working loop contained in section 54.307(b) of the Commission's rules. As the disputed lines were not working loops under section 54.307(b), they were not eligible for universal service, and USAC correctly sought to recover the support previously provided.

7. We reject Coral Wireless's argument that excluding these loops from funding is a retroactive application of a new or changed policy. We are not persuaded that the *InterCall Order* cited by Coral Wireless is applicable.<sup>16</sup> Nothing in the record before us indicates a prior stated policy or widespread practice in the industry to receive support for lines that divert calls to call centers rather than the desired party.

8. We also reject Coral Wireless's request for a one-time waiver of the requirement that support is calculated based on working loops. Good cause must exist to grant a waiver. Good cause requires that special circumstances warrant a deviation from the general rule, and such deviation would service the public interest.<sup>17</sup> Coral Wireless has not identified why the public interest would be served if support is provided for these disputed loops. While Coral Wireless argues that the reduction in universal service funding caused by excluding support for these loops would reduce service to customers, this argument proves too much. Holding that the public interest prong of the waiver standard is met whenever a carrier is faced with a reduction in support would effectively negate the public interest requirement, as this criterion would be met any time application of a rule resulted in reduced support. Such an exception would swallow the rule. Therefore, we deny Coral Wireless's request for a waiver.

## **B. Cordova**

9. Based on our review, we conclude that some of the lines for which Cordova seeks support were not offered for a fee, and therefore were not eligible for support under section 54.307(b) of the Commission's rules. We remand the matter to USAC to determine which of the lines in question were offered for no fee to customers. USAC is directed to recover support for the disputed lines that were offered for no fee.

10. In 2011, in the course of a routine data validation of submitted line counts, USAC informed Cordova that a number of its reported lines were ineligible for high-cost support.<sup>18</sup> USAC determined that these lines did not qualify as working loops eligible for high-cost support because the

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<sup>15</sup> *Id.* (emphasis added).

<sup>16</sup> *Request for Review by InterCall, Inc. of Decision of the Universal Service Administrator*, CC Docket No. 96-45, Order, 23 FCC Rcd 10731 (2008) (*InterCall Order*). In the *InterCall Order*, the Commission deemed conference calling services to be telecommunications services and required conference calling providers to directly contribute to the universal service fund. Of the 40 providers offering conference calling services prior to the *InterCall Order*, only 11 were directly contributing, and each of those had independent grounds for doing so other than the provision of conference calling services. *Id.* at 10739, para. 23 n.62. The Commission noted that this evidenced a pattern of industry practice that conference calling services were not telecommunications services, and thus, for this and other reasons, only prospective application was warranted. *Id.* at 10739, para. 23.

<sup>17</sup> *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (citing *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969)).

<sup>18</sup> Cordova Petition at 3.

lines showed no activity or usage (hereinafter, disputed lines).<sup>19</sup> In response, Cordova argued that the disputed lines were for phones that Cordova donated to public safety for use in emergencies, which, by their nature, are rarely if ever used.<sup>20</sup> Cordova stated that it donates the handsets for the disputed lines and provides a local-only service plan for no cost to the end user.<sup>21</sup>

11. As noted above, section 54.307 defines working loops to be reported as “the number of working Exchange Line C&WF loops used jointly for exchange and message telecommunications services.”<sup>22</sup> Section 54.5 of the Commission’s rules defines “telecommunications services” as “the offering of telecommunications *for a fee* directly to the public.”<sup>23</sup>

12. Based on Cordova’s statements in the record, we conclude that some of the disputed lines were not offered “for a fee.” Cordova stated that it covers the cost of both the handset and local-only service plan for at least some of the disputed lines.<sup>24</sup> As those disputed lines were not offered “for a fee,” they were not used for telecommunications services, and thus do not qualify as working loops eligible for support under section 54.307 of the Commission’s rules.

13. We cannot determine from the record before us which of the disputed lines were not offered for a fee. We therefore remand this matter to USAC to determine the precise number of the disputed lines that were not offered for a fee. USAC is directed to recover support for those disputed lines not offered for a fee.

14. If in conducting that review, USAC determines that some disputed lines were offered for a fee, USAC is directed to cease recovery of support on those lines. There is no rule requiring activity on a line as a precondition for receiving high-cost support. Section 54.307 of the Commission’s rules does not specify a requirement for customer usage.<sup>25</sup> Given that the Commission has not articulated a requirement for usage on lines receiving high-cost support, we conclude that USAC erred in requiring Cordova to demonstrate activity on the disputed lines.<sup>26</sup>

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<sup>19</sup> *Id.* at 11.

<sup>20</sup> *Id.* at 13-14.

<sup>21</sup> *Id.* at 13 n.24. Cordova also filed a petition regarding lines on which support was withheld for failing to provide a local billing address. We have addressed this matter in a separate order. *Federal-State Joint Board on Universal Service et al.*, CC Docket No. 96-45 et al., Order, DA 14-1075, paras. 19-23 (Wireline Comp. Bur. rel. July 28, 2014).

<sup>22</sup> 47 C.F.R. § 54.307. C&WF is an abbreviation for cable and wire facilities. 47 C.F.R. § 36.154.

<sup>23</sup> 47 C.F.R. § 54.5 (emphasis added).

<sup>24</sup> Cordova Petition at 13 n.24.

<sup>25</sup> We note that the Commission has adopted a specific usage requirement for Lifeline service when the carrier does not assess and collect a monthly fee from subscribers. See 47 C.F.R. § 54.407(c) (2); *Lifeline and Link Up Reform and Modernization*, WC Docket No. 11-42, Report and Order and Further Notice of Proposed Rulemaking, 27 FCC Rcd 6656, 6768-69, para. 257 (2012) (concluding that prepaid eligible telecommunication carriers will not receive Lifeline support for inactive subscribers who have not used the service for a consecutive 60-day period).

<sup>26</sup> 47 C.F.R. § 54.702(c).

**IV. ORDERING CLAUSES**

15. ACCORDINGLY, IT IS ORDERED that, pursuant to the authority contained in section 1-4 and 254 of the Communications Act, 47 U.S.C. §§ 151-154, and 254, and pursuant to sections 0.91, 0.291, 1.3, and 54.722 of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, 1.3, and 54.722, the request for review and waiver filed by Coral Wireless IS DENIED.

16. IT IS FURTHER ORDERED that, pursuant to the authority contained in section 1-4 and 254 of the Communications Act, 47 U.S.C. §§ 151-154, and 254, and pursuant to sections 0.91, 0.291, 1.3, and 54.722 of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, 1.3, and 54.722, the request for review filed by Cordova Wireless Communications IS REMANDED to the Universal Service Administrative Company for decision consistent with this Order.

17. IT IS FURTHER ORDERED that, pursuant to section 1.102(b)(1) of the Commission's rules, 47 C.F.R. § 1.102(b)(1), this order SHALL BE effective upon release.

FEDERAL COMMUNICATIONS COMMISSION

Carol E. Matthey  
Acting Chief  
Wireline Competition Bureau